tenant for life of land, with remainder to another in fee, sues a stranger for injury to the property caused by the stranger's negligence in allowing the fire to spread. *Held*, that he may recover for the injury both to his interest and to that of the remainderman. *Rogers* v. *Atlantic, Gulf & Pacific Co.*, 213 N. Y. 246, 107 N. E. 661.

The principal case definitely discards the doctrine of the older cases, which based the life tenant's right to recover for injury to the remainder on the hypothesis that the stranger's negligence rendered the life tenant liable for waste. See *Austin* v. *Hudson R. R. Co.*, 25 N. Y. 334, 344. Some cases even required actual payment to the remainderman before permitting the particular tenant to recover in full. *Wood* v. *Griffin*, 46 N. H. 230, 239. Under the old law, this line of reasoning was possible, for a life tenant was punishable for waste committed by a stranger. *Anonymous*, FITZ. ABR., WASTE, pl. 30. See ST. OF GLOUCESTER, 6 EDW. I., c. 5. Under modern English law, however, a tenant for life is not liable for permissive waste. *In re Cartwright*, 41 Ch. D. 532. The same result has been reached in this country as to accidental fires. *Sampson* v. *Grogan*, 21 R. I. 174, 42 Atl. 712. See 13 HARV. L. REV. 151. And the principal case, in line with the modern tendency, decides that negligent injury by a stranger does not make the life tenant liable for waste. But it nevertheless permits him to recover full damages, by analogy to the rule which allows a bailee to recover against a wrongdoer, even when not liable to the bailor. See *The Winkfield*, [1902] P. 42. The analogy is not perfect, for life tenant and remainderman have such distinct estates that each would be expected to recover simply for the injury to his own interest. *Zimmerman* v. *Shreeve*, 59 Md. 357; *cf. McIntire* v. *Westmoreland Coal Co.*, 118 Pa. St. 108. *Cf. Rockwood* v. *Robinson*, 159 Mass. 406, 34 N. E. 521. In the ordinary case, moreover, it involves no assertion of the *jus tertii* for the wrongdoer to set up that the tenant has only a life estate and should be limited accordingly in his recovery. *Illinois, etc. Coal Co.* v. *Cobb*, 94 Ill. 55. Procedural convenience, however, affords ample justification for the result of the principal case. It permits the whole controversy to be settled in one action, and at the same time adequately protects the remainderman by imposing a trust in his favor on what the tenant recovers in excess of his own interest.

MASTER AND SERVANT — EMERGENCY DUTY TO SUMMON MEDICAL ASSISTANCE TO INJURED EMPLOYEE. — Plaintiff's intestate, an employee in defendant's stone quarry, was run over by a car which severely crushed and lacerated his leg. The accident occurred without defendant's fault. By reason of the negligent delay of defendant's superintendent in summoning a physician, the employee bled to death. His administrator sues the defendant company. *Held*, that he may recover. *Hunicke* v. *Meramec Quarry Co.*, 172 S. W. 43 (Mo.).

For a discussion of this case, see NOTES, p. 607.

NEGLIGENCE — DEFENSES — INJURY SUSTAINED IN SAVING LIFE ENDANGERED BY ANOTHER'S NEGLIGENCE. — The engineer's negligent handling of a train threatened collision with a caboose in which there were several persons. To avoid this, a brakeman stepped in front of the moving train and attempted to apply the emergency air brake. *Held*, that he may recover from the railroad for the injuries sustained. *Haigh* v. *Grand Trunk Pacific Ry. Co.*, 30 West. L. R. 173 (Alberta).

The plaintiff, noticing a train approaching, tried to remove a small push car which he had wrongfully placed upon defendant's tracks, but was injured by reason of negligence on the part of the engineer after discovery of the plaintiff's danger. *Held*, that the plaintiff may recover. *Great Northern Ry. Co.* v. *Harman*, 217 Fed. 959 (C. C. A., 9th Circ.).

Where the plaintiff voluntarily risks his own life in order to save the lives of others imperiled by the wrongful conduct of the defendant, his right of action rests upon the ground that such intervention is foreseeable. Consequently the courts recognize a duty running to the plaintiff to avoid causing such peril to the lives of others as to invite humane rescuers to risk their own safety. *Eckert* v. *Long Island R. Co.*, 43 N. Y. 502; *Dixon* v. *New York, N. H. & H. Ry. Co.*, 207 Mass. 126, 92 N. E. 1030. See 24 HARV. L. REV. 407. It is generally said, furthermore, that the rescuer's conduct does not necessarily involve contributory negligence and that he will be denied recovery only if he acted so rashly or recklessly that a jury would deem him unreasonable in taking the risk. *Eckert* v. *Long Island R. Co., supra; Pennsylvania Co.* v. *Langendorff*, 48 Oh. St. 316, 28 N. E. 172. *Contra, Anderson* v. *Northern Ry.*, 25 U. C. C. P. 301. *Cf. Blair* v. *Grand Rapids L. & D. R. Co.*, 60 Mich. 124, 26 N. W. 855. In the second principal case, the court relied in part upon the doctrine of "last clear chance." This seems erroneous, in view of the rescuer's ability to step back from the tracks at a time when the defendant is no longer able to avoid the accident. See 27 HARV. L. REV. 757. In both cases there may be some question upon the facts whether the plaintiff was trying to save life and not merely attempting to avoid the destruction of property. See *Condiff* v. *Kansas City, etc. R. Co.*, 45 Kan. 256, 25 Pac. 562. See 24 HARV. L. REV. 406. But on this point the cases show a tendency to allow recovery wherever the plaintiff's conduct can reasonably be explained as an effort to prevent loss of human life.

PAROL EVIDENCE — SUBSTANTIVE LAW EXPRESSED IN TERMS OF EVIDENCE — CONTRACTS: ADDITION OF A TERM IMPLIED BY CUSTOM. — The plaintiff by a written contract licensed the defendant to perform a certain play in the United States and Canada, and brought suit for the royalties accruing under the contract. The defendant offered parol evidence to show a custom in the theatrical business that such licenses were in fact understood to be exclusive. *Held*, that the evidence was properly excluded. *Hart* v. *Cort*, 151 N. Y. Supp. 4 (App. Div.).

It is a well-established principle that parties to a contract on a subject matter concerning which known usages prevail, are deemed to have incorporated such usages by implication into their agreement, if nothing is said to the contrary. *Brown* v. *Byrne*, 3 E. & B. 703; *Newhall* v. *Appleton*, 114 N. Y. 140, 21 N. E. 105; *Atkinson* v. *Truesdell*, 127 N. Y. 230, 27 N. E. 844. But in determining what was the understanding of the parties the court is limited by the rule that whatever by the terms of the writing the parties have either expressly or impliedly excluded, cannot be considered a part of the contract, and it requires no rule of evidence to render such matter incompetent. This should be, it is submitted, the criterion in determining the admissibility of custom and usage. See *Webb* v. *Plummer*, 2 B. & Ald. 746, 750; 4 WIGMORE, EVIDENCE, § 2430. Therefore in the principal case, since it does not appear that the writing purported to dispose of the question raised by the evidence offered, it would seem that the custom should be admissible to enable the court to interpret the meaning of the contract. Upon the whole subject the authorities are somewhat confused, but better reason and the weight of authority seem to support the view of the dissenting judges. See 6 HARV. L. REV. 325, 418.

RULE AGAINST PERPETUITIES — GENERAL AND PARTICULAR INTENT IN CONNECTION WITH RULE. — The testator left family portraits to "the eldest of my sons who may be living at the decease of my wife and myself in trust to preserve and to be transferred at his death to my next eldest son then alive — and so on — through all my sons; and then to the eldest grandson then alive and at his death to the next eldest and so on through all the grandsons." The